

**Part I**  
**Employment Law: Sources and Institutions**



## Chapter 1

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# Sources and Institutions

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### SOURCES

[1.01] Employment law is derived from a number of sources: the Constitution, legislation, common law and international law. The balance between these sources is continuously changing. At times common law has been at the cutting edge of the evolution of employment law.<sup>1</sup> At other times, most notably in the 1970s with the enactment of several important employment law statutes,<sup>2</sup> legislation has been the front-runner in development of the law. This book considers all of these sources of employment law.

### Common law

[1.02] Common law is judge-made law. Common law, in the context of employment and labour law, is principally concerned with the law of contract and the law of tort. Claims relating to employment that arise out of the contract of employment, such as dismissal in breach of contract, or from the tortious duty of care of the employer, are within the remit of the courts. The common law has implied terms into the employment contract that are considered to flow from the very nature of the contract. Among the most important are the employer's common law duty of care, the duty to maintain trust and confidence and the duty of good faith and loyalty.<sup>3</sup>

### Legislation

[1.03] Since the 1970s, statute has become an increasingly lively source of Irish employment law. In general, the core employment legislation lays down the minimum threshold of employment rights protection. Legislation, in the form of Acts and Statutory Instruments, provides for matters such as working time, minimum wage, health and safety, information and consultation, termination of employment, redundancy, protective leave, the transfer of a business and equality. The legislation imposes terms into the employment contract.

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<sup>1</sup> See, for example, the discussion of the mutual implied obligation of trust and confidence in Ch 14, Dismissal, paras [14.24]–[14.33].

<sup>2</sup> The Holidays (Employees) Act 1973, the Minimum Notice and Terms of Employment Act 1973, the Anti-Discrimination (Pay) Act 1974, the Employment Equality Act 1977, the Unfair Dismissals Act 1977, the Worker Participation (State Enterprises) Act 1977, the Protection of Young Persons (Employment) Act 1977 and the Protection of Employment Act 1977.

<sup>3</sup> See Ch 3, The Terms of the Employment Contract.

Among the most important employment statutes are the:

- (i) Redundancy Payments Acts 1967–2007;
- (ii) Industrial Relations Acts 1969–2004;
- (iii) Unfair Dismissals Acts 1977–2007;
- (iv) Protection of Employees (Employers’ Insolvency) Act 1984;
- (v) Payment of Wages Act 1991;
- (vi) Minimum Notice and Terms of Employment (Information) Acts 1994–2001;
- (vii) Maternity Protection Acts 1994 and 2004;
- (viii) Adoptive Leave Acts 1995 and 2005;
- (ix) Protection of Young Persons (Employment) Act 1996;
- (x) Organisation of Working Time Act 1997;
- (xi) Parental Leave Acts 1998 and 2006;
- (xii) Employment Equality Acts 1998–2008;
- (xiii) National Minimum Wage Act 2000;
- (xiv) Carer’s Leave Act 2001;
- (xv) Protection of Employees (Part-Time Work) Act 2001;
- (xvi) Protection of Employees (Fixed-Term Work) Act 2003;
- (vii) EC (Protection of Employees on Transfer of Undertakings) Regulations 2003;
- (xviii) Safety, Health and Welfare at Work Act 2005;
- (xix) Employees (Provision of Information and Consultation) Act 2006; and
- (xx) Employment Permits Act 2006.

### **The Constitution**

[1.04] Articles 40–44 of the Constitution are entitled ‘Fundamental Rights’. Among the most important of these rights in the context of employment law are:

#### **Equality**

Article 40.1: All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

#### **Good Name**

Article 40.3.2°: The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.

#### **Freedom of Expression**

Article 40.6.1°: The State guarantees liberty for the exercise of the following rights, subject to public order and morality:

- (i) The right of the citizens to express freely their convictions and opinions...
- (ii) The right of the citizens to assemble peaceably and without arms...
- (iii) The right of the citizens to form associations and unions.

Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right.

#### **Freedom of Association**

Article 40.6.2<sup>o</sup>: Laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious or class discrimination.

#### **Freedom of Religion**

Article 44.2.3<sup>o</sup>: The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

#### **Unenumerated Rights**

Article 40.3.1<sup>o</sup>: The State guarantees by its laws to respect and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

Article 40.3.1<sup>o</sup>: has been held to provide the basis for the enumeration of other rights, not expressly guaranteed by the Constitution.

The High Court and Supreme Court in *Ryan v the Attorney General*<sup>4</sup> declared clearly for the first time that Article 40.3 contained unspecified personal rights beyond those expressly enumerated.<sup>5</sup> Kenny J held:<sup>6</sup>

In my opinion, the High Court has jurisdiction to consider whether an Act of the Oireachtas respects and, as far as practicable, defends and vindicates the personal rights of the citizen and to declare the legislation unconstitutional if it does not. I think that the personal rights which may be involved to invalidate legislation are not confined to those specified in Article 40 but include all those rights which result from the Christian and democratic nature of the State ... If it extends to personal rights other than those specified in Article 40, the High Court and Supreme Court have the difficult and responsible duty of ascertaining and declaring what are the personal rights of the citizen which are guaranteed by the Constitution ... the general guarantee in sub-s. 1<sup>o</sup> must extend to rights not specified in Article 40 ... there are many personal rights of the citizen which follow from the Christian and democratic nature of the State which are not mentioned in Article 40 at all – the right to free movement within the State and right to marry are examples of this. This also leads to the conclusion that the general guarantee extends to rights not specified in Article 40.

The Supreme Court agreed with this interpretation:

The Court agrees with Kenny J that the ‘personal rights’ mentioned in section 3.1<sup>o</sup> are not exhausted by the enumeration of ‘life, person, good name, and property rights’ in section 3.2<sup>o</sup>, as is shown by the use of the words ‘in particular’; nor by the more detached treatment of specific rights in the subsequent sections of the Article. To attempt to make a list of all the rights which may properly fall within the category of ‘personal rights’ would be difficult ....<sup>7</sup>

<sup>4</sup> *Ryan v the Attorney General* [1963] IR 294.

<sup>5</sup> See further Hogan & Whyte, *Kelly: The Irish Constitution* (4th edn, Tottel Publishing, 2003).

<sup>6</sup> *Ryan v the Attorney General* [1963] IR 294 at 312–313.

<sup>7</sup> *Ryan v the Attorney General* [1963] IR 294 at 344–345, Ó Dálaigh CJ.

A number of rights of importance to employment law have been found to be encompassed by the guarantee of Art 40.3. The right to work and earn a livelihood was clearly recognised in *Murphy v Stewart*,<sup>8</sup> the right to individual privacy was successfully invoked in *Kennedy v Ireland*,<sup>9</sup> the right to fair procedures was identified in *Re Padraig Haughey*<sup>10</sup> and in *Glover v BLN Ltd*,<sup>11</sup> and the right to strike was recognised in *Brendan Dunne Ltd v Fitzpatrick*<sup>12</sup> and *Educational Co v Fitzpatrick (No 2)*.<sup>13</sup>

### **The European Convention on Human Rights**

[1.05] The European Convention on Human Rights (the Convention) obliges states who are party to the Convention to secure to everyone within their jurisdiction rights and freedoms defined in the Convention. The provisions of most potential influence to employment law are:

#### **Privacy**

Article 8.1: Everyone has the right to respect for his private and family life, his home and his correspondence.

#### **Freedom of thought, conscience and religion**

Article 9.1: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in the community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Article 9.2: Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

#### **Freedom of Expression**

Article 10.1: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

Article 10.2: The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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<sup>8</sup> *Murphy v Stewart* [1973] IR 97.

<sup>9</sup> *Kennedy v Ireland* [1987] IR 587.

<sup>10</sup> *Re Padraig Haughey* [1971] IR 217.

<sup>11</sup> *Glover v BLN Ltd* [1973] IR 388.

<sup>12</sup> *Brendan Dunne Ltd v Fitzpatrick* [1958] IR 29.

<sup>13</sup> *Educational Co v Fitzpatrick (No 2)* [1961] IR 345.

**Freedom of Assembly and Association**

Article 11.1: Everyone has the right to peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

Article 11.2: No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

**Prohibition of Discrimination**

Article 14: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

[1.06] The Convention was incorporated into Irish law by the European Convention on Human Rights Act 2003. The long title to the Act describes the Act as:

An Act to enable further effect to be given, subject to the Constitution, to certain provisions of the Convention for the protection of human rights and fundamental freedoms done at Rome on the 4th day of November 1950 and certain protocols thereto, to amend the Human Rights Commission Act 2000 and to provide for related matter.

The Act provides for interpretative incorporation of the Convention at sub-constitutional level. Section 2(1) of the European Convention on Human Rights Act 2003 provides:

In interpreting and applying any statutory provision or rule of law, a court shall, in so far as possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions.

Section 3 obliges State organs to perform their functions in a manner which is compatible with the State's obligations under the Convention. This section created a new avenue of redress in the form of an action in tort for breach of statutory duty by an organ of the State. Section 5(1) provides for declarations of incompatibility:

In any proceedings, the High Court, or the Supreme Court when exercising its appellate jurisdiction, may, having regard to the provisions of section 2, on application to it in that behalf by a party or of its own motion, and where no other legal remedy is adequate and available, make a declaration (referred to in this Act as a 'declaration of incompatibility') that a statutory provision or rule of law is incompatible with the State's obligations under the Convention provisions.'

Section 5(2)(a) provides that a declaration of incompatibility:

[s]hall not affect the validity, continued operation or enforcement of the statutory provision or rule of law in respect of which it is made.

Where there is a declaration of incompatibility, the Taoiseach must notify the Houses of the Oireachtas of the declaration and the Government may make an *ex gratia* compensation payment to the party claiming injury due to the incompatibility.<sup>14</sup>

<sup>14</sup> European Convention on Human Rights Act 2003, ss 5(3) and 5(4).

The impact of the Convention on employment law has been limited, principally due to the strong protections provided by the Constitution.<sup>15</sup> However, the Convention has potential to influence the interpretation of rights to fair procedures, privacy and freedom of association and expression.<sup>16</sup>

## **INSTITUTIONS<sup>17</sup>**

### **The Labour Relations Commission**

#### ***Origin***

[1.07] The Labour Relations Commission was established on 21 January 1991 under s 24 of the Industrial Relations Act 1990. The then Minister for Labour, Bertie Ahern, detailed the background to the proposed new Commission:<sup>18</sup>

The Bill now before the House provides a framework for the improved conduct of industrial relations and for the resolution of trade disputes, with the aim of maintaining a stable and orderly industrial relations climate. The Bill provides for major reform of the law on industrial relations, trade dispute and trade union law and for the establishment of a new Labour Relations Commission....

The changes which the Bill provides for in relation to the dispute resolution machinery have four principal objectives: to give a new general responsibility for the promotion of better industrial relations to an appropriate body; to encourage and facilitate a more active approach to dispute prevention and resolution; to restore the original purpose and status of Labour Court investigation and recommendations; and to make provision for a number of new functions and services.

The major change provided for is the establishment of a new Labour Relations Commission guided by a tripartite council, with employer, trade union and independent representation. In addition to the overall responsibility for the promotion of good industrial relations, the commission will have a wide range of functions including the provision of conciliation and advisory services and the development of codes of practice...

#### ***Structure***

[1.08] The Labour Relations Commission is headed by a chief executive, appointed by the Minister for Enterprise, Trade and Employment after consultation with the Commission.<sup>19</sup> The Commission consists of a chairman and six ordinary members, two of which are workers' members, two employers' members and two members nominated

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<sup>15</sup> See Hogan, 'The European Convention on Human Rights Act 2003' (2006) *EPL* 12(3) 331.

<sup>16</sup> See Law Society of Ireland, 'ECHR Act 2003, A Preliminary Assessment' (2006) and Bowers and Lightman, 'Incorporation of the ECHR and its impact on Employment Law' (1998) *EHRLR* 560–581.

<sup>17</sup> On practice and procedure of the fora involved in the resolution of employment rights disputes, see Ch 22, Practice and Procedure in Employment Law.

<sup>18</sup> Dáil Debates, Seanad Éireann – Volume 125 – 10 July 1990, Industrial Relations Bill 1989: Second Stage, columns 2081–2094.

<sup>19</sup> Industrial Relations Act 1990, s 28.

by the Minister.<sup>20</sup> The workers' members are nominated for appointment by organisations representative of trade unions of workers. The employers' members are nominated by organisations representative of employers. The ordinary members are part-time members of the Commission.<sup>21</sup>

The Minister can, with the consent of the Minister for Finance, appoint such staff as he thinks necessary to assist the Commission in the performance of its functions.<sup>22</sup> The Commission has appointed staff as industrial relations officers.<sup>23</sup> The 1990 Act provides that the officers shall perform any duties assigned to them by the Commission through its chairman or its chief executive officer and, in particular they shall assist in the prevention and settlement of trade disputes.<sup>24</sup> Industrial relations officers assist in the provision of the conciliation services and as chairpersons to a number of Joint Industrial Councils and Joint Labour Committees. From time to time, they also chair working groups of unions and management in various industries. The Commission may also appoint members of its staff, including industrial relations officers, to give advice on matters relating to industrial relations to management and workers or their representatives.<sup>25</sup> Advisory officers assist in the provision of the advisory services of the Commission.

### **Functions**

**[1.09]** The Commission has general responsibility for promoting the improvement of industrial relations<sup>26</sup> and provides the following services:

- (i) an industrial relations conciliation service;
- (ii) an industrial relations advisory service;
- (iii) a Rights Commissioner service. This service is considered below; and the Commission also has particular functions, pursuant to s 202 of the Taxes Consolidation Act 1997, in relation to registered agreements providing for reductions in pay;
- (iv) a workplace mediation service; and
- (v) assistance to Joint Labour Committees and Joint Industrial Councils.

The Commission also undertakes other activities of a more general kind including:<sup>27</sup>

- (i) the review and monitoring of developments in the area of industrial relations;
- (ii) the preparation, in consultation with the Social Partners, of codes of practice relevant to industrial relations;
- (iii) industrial relations research and publications;

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<sup>20</sup> Industrial Relations Act 1990, s 24(3) and Sch 4.

<sup>21</sup> Industrial Relations Act 1990, Sch 4.

<sup>22</sup> Industrial Relations Act 1990, s 32(1).

<sup>23</sup> Industrial Relations Act 1990, s 33(1).

<sup>24</sup> Industrial Relations Act 1990, s 33(2).

<sup>25</sup> Industrial Relations Act 1990, s 33(3).

<sup>26</sup> Industrial Relations Act 1990, s 25(1). This section details the functions of the Commission.

<sup>27</sup> Industrial Relations Act 1990, s 25.

- (iv) organisation of seminars and conferences on industrial relations and human resource management issues.

### **The Rights Commissioner Service**

#### ***Origin***

[1.10] The Industrial Relations Act 1969 provided for the appointment by the Minister for Labour (now the Minister for Enterprise, Trade and Employment) of rights commissioners.<sup>28</sup> The Industrial Relations Act 1990 brought the Rights Commissioner Service under the aegis of the Labour Relations Commission.<sup>29</sup>

#### ***Structure***

[1.11] Rights commissioners may be appointed for a term of up to three years<sup>30</sup> and can be reappointed for a further term or terms.<sup>31</sup> There are currently 14 rights commissioners.<sup>32</sup> Rights commissioners are appointed by the Minister for Enterprise Trade and Employment from a panel provided by the Commission.<sup>33</sup>

#### ***Functions***

[1.12] Rights commissioners are empowered to hear claims under a range of Acts and Statutory Instruments:

- (i) Adoptive Leave Acts 1995 and 2005;
- (ii) Carers Leave Act 2001;
- (iii) Competition Acts 2002–2006;
- (iv) Employees (Information & Consultation) Act 2006;
- (v) Employment Permits Act 2006;
- (vi) Industrial Relations Acts 1969–1990;
- (vii) Industrial Relations (Miscellaneous Provisions) Act 2004 (claims of victimisation);
- (viii) Maternity Protection Acts 1994 and 2004;
- (ix) National Minimum Wage Act 2000;
- (x) Organisation of Working Time Act 1997;
- (xi) Parental Leave Acts 1998 and 2006;
- (xii) Payment of Wages Act 1991;
- (xiii) Protection of Employees (Fixed-Term Work) Act 2003;
- (xiv) Protection of Employees (Part-time Work) Act 2001;
- (xv) Protection of Young Persons (Employment) Act 1996;

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<sup>28</sup> Industrial Relations Act 1969, s 13(1).

<sup>29</sup> Industrial Relations Act 1990, s 35(1).

<sup>30</sup> Industrial Relations Act 1990, s 34(2).

<sup>31</sup> Industrial Relations Act 1990, s 34(3).

<sup>32</sup> Labour Relations Commission Annual Report 2007.

<sup>33</sup> Industrial Relations Act 1969, s 13(1).

- (xvi) Protections for Persons Reporting Child Abuse Act 1998;
- (xvii) Safety, Health and Welfare at Work Act 2005;
- (xviii) Terms of Employment (Information) Acts 1994–2001;
- (xix) Unfair Dismissals Acts 1977–2007;
- (xx) European Communities (Protection of Employment) Regulations 2000;
- (xxi) European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003; and
- (xxii) European Communities (European PLC) (Employee Involvement) Regulations 2006.

According to the 2007 Labour Relations Commission Annual Report, the majority of referrals to the Rights Commissioner Service are under the Payment of Wages Act, the Terms of Employment (Information) Acts, the Unfair Dismissals Acts, the Industrial Relations Acts and the Safety, Health and Welfare at Work Act.<sup>34</sup>

## **The Labour Court**

### ***Origin***

[1.13] The Labour Court was established in 1946 under the Industrial Relations Act 1946.<sup>35</sup> It is an industrial relations tribunal and in dealing with industrial relations disputes, except for those heard under the Industrial Relations Acts 2001–2004, the Labour Court's jurisdiction is limited to making recommendations rather than enforceable determinations.

The 1946 Act gave the Labour Court functions in relation to the investigation of disputes and the issuing of recommendations on foot of such investigations,<sup>36</sup> the registration of employment agreements,<sup>37</sup> the establishment of joint labour committees,<sup>38</sup> the making and enforcement of employment regulation orders<sup>39</sup> and the registration of Joint Industrial Councils.<sup>40</sup> The Industrial Relations Act 1990 conferred powers on the Labour Court in relation to interpreting and investigating complaints of breach of codes of practice.<sup>41</sup> The Industrial Relations (Amendment) Act 2001 as amended by the Industrial Relations (Miscellaneous Provisions) Act 2004 provided for the investigation of disputes and binding determinations by the Labour Court where certain preconditions were satisfied in relation to the dispute.<sup>42</sup>

<sup>34</sup> On the jurisdiction of, and procedure before, Rights Commissioners, see Ch 22, Practice and Procedure in Employment Law, paras [22.04]–[22.24].

<sup>35</sup> Industrial Relations Act 1946, s 10.

<sup>36</sup> Industrial Relations Act 1946, Part VI.

<sup>37</sup> Industrial Relations Act 1946, s 26.

<sup>38</sup> Industrial Relations Act 1946, s 35.

<sup>39</sup> Industrial Relations Act 1946, s 42.

<sup>40</sup> Industrial Relations Act 1946, s 60.

<sup>41</sup> Industrial Relations Act 1990, s 43.

<sup>42</sup> See further Ch 19, Industrial Relations.

Employment legislation relating to equality,<sup>43</sup> working time,<sup>44</sup> minimum wage,<sup>45</sup> part-time work<sup>46</sup> and fixed-term work<sup>47</sup> conferred jurisdiction on the Labour Court in relation to the enforcement of the legislation.

### **Structure**

[1.14] The Labour Court consists of nine full-time members, composed of a chairman, two deputy chairmen and six ordinary members.<sup>48</sup> Three of the ordinary members are workers' members and three are employers' members.<sup>49</sup> The chairman and the two deputy chairmen are appointed by the Minister for Enterprise, Trade and Employment. The employers' members are appointed by the Minister, on the nomination of IBEC (the Irish Business and Employers' Confederation) and the workers' members are appointed by the by the Minister, on the nomination of ICTU (the Irish Congress of Trade Unions). The court operates in three separate Divisions, of chairman/deputy chairman, employers' member and workers' member, and may also sit as a full court.<sup>50</sup>

### **Functions**

[1.15] The Labour Court's functions are:<sup>51</sup>

1. Industrial Relations:

To investigate trade disputes under the Industrial Relations Acts 1946–2004 when referred to in the court in any of the following ways:

(i) **Appeal of Rights Commissioner Recommendation**

To hear appeals from Rights Commissioner recommendations under the Industrial Relations Acts;<sup>52</sup>

(ii) **Advance Acceptance of Recommendation**

Where workers in a trade dispute or a trade union or all parties agree in advance to accept the Labour Court recommendation, the dispute may be referred directly to the Labour Court;<sup>53</sup>

<sup>43</sup> Employment Equality Acts 1998–2008, s 83 and Pensions Act 1990, s 77.

<sup>44</sup> Organisation of Working Time Act 1997, s 24, as amended by EC (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 (SI 494/2004), Reg 12 and Organisation of Working Time Act 1997, s 28, as amended by Protection of Employees (Fixed-Term) Work Act 2003, s 19(2)(a).

<sup>45</sup> National Minimum Wage Act 2000, s 41.

<sup>46</sup> Protection of Employees (Part-Time) Work Act 2001, s 11 and Sch and Protection of Employees (Part-Time Work) Act 2001, s 17.

<sup>47</sup> Protection of Employees (Fixed-Term Work) Act 2003, s 15.

<sup>48</sup> Industrial Relations Act 1969, ss 2 and 4.

<sup>49</sup> Industrial Relations Act 1969, s 2.

<sup>50</sup> Industrial Relations Act 1969, s 3.

<sup>51</sup> On the jurisdiction and procedure of the Labour Court, see Ch 22, Practice and Procedure in Employment Law, paras [22.58]–[22.66].

<sup>52</sup> Industrial Relations Act 1969, s 13(9).

<sup>53</sup> Industrial Relations Act 1969, s 20(1).

- (iii) **Referral by Labour Relations Commission**  
The Labour Court may investigate a trade dispute where the parties to the dispute have availed of the services of the Labour Relations Commission but have failed to reach agreement and the Commission refers the dispute to the Labour Court at the request of the parties;<sup>54</sup>
- (iv) **Waiver by Labour Relations Commission**  
Where the Labour Relations Commission has waived its conciliation function and the parties have requested the Labour Court to investigate the dispute, the Court may hear the dispute;<sup>55</sup>
- (v) **Labour Court Intervention**  
Where the Court, following consultation with the Commission, is of the opinion that there are exceptional circumstances which warrant it investigating the dispute even though the conditions of hearing from a referral by the Labour Relations Commission are not satisfied, the Court may intervene to hear the dispute;<sup>56</sup>
- (vi) **Ministerial Intervention**  
Where the Minister for Enterprise, Trade and Employment is of the opinion that a trade dispute, actual or apprehended, affects the public interest, he may refer the matter to the Court and the Court must endeavour to resolve the dispute;<sup>57</sup>
- (vii) Industrial Relations (Amendment) Act 2001 as amended by the Industrial Relations (Miscellaneous Provisions) Act 2004;  
The court may investigate trade disputes referred to it under the Industrial Relations Acts 2001–2004;<sup>58</sup>
- (viii) To establish Joint Labour Committees and decide certain questions as to their operation.<sup>59</sup> Joint Labour Committees are established by order of the Labour Court upon application by the Minister for Enterprise, Trade and Employment, by a trade union or any organisation or group claiming to be representative of workers or employers in a particular sector.<sup>60</sup> The Committee may submit to the Labour Court proposals for fixing the minimum pay and conditions of employment for workers in the sector.<sup>61</sup> The Court may make an employment regulation order giving effect to the proposals;<sup>62</sup>

<sup>54</sup> Industrial Relations Act 1990, s 26.

<sup>55</sup> Industrial Relations Act 1990, s 26(3).

<sup>56</sup> Industrial Relations Act 1990, s 26(5).

<sup>57</sup> Industrial Relations Act 1990, s 38(1).

<sup>58</sup> See further Ch 18, Industrial Relations.

<sup>59</sup> Industrial Relations Act 1946, s 35 and Sch 2.

<sup>60</sup> Industrial Relations Act 1946, s 35. At the end of 2007 there were 17 Joint Labour Committees in existence (Labour Court Annual Report 2007).

<sup>61</sup> Industrial Relations Act 1946, s 42.

<sup>62</sup> Industrial Relations Act 1946, s 43.

- (ix) To register, vary, and interpret employment agreements;<sup>63</sup>
- (x) To investigate complaints of breaches of registered employment agreements<sup>64</sup>;
- (xi) To register Joint Industrial Councils.<sup>65</sup>

Section 59 of the 1946 Act defines ‘qualified joint industrial council’ as:

an association of persons which complies with the following conditions –

- (a) that it is substantially representative of workers of a particular class, type or group and their employers,
- (b) that its object is the promotion of harmonious relations between such employer and such workers,
- (c) that its rules provide that, if a trade dispute arises between such workers and their employers a lock-out or strike will not be undertaken in support of the dispute until the dispute has been referred to the association and considered by it;

There are currently three registered joint industrial councils. They are the Joint Board of Conciliation and Arbitration for the Boot and Shoe Industry of Ireland, registered on 10 July 1948, the Joint Industrial Council for the Dublin Wholesale Fruit and Vegetable Trade, registered on 27 January 1964, and the Joint Industrial Council for the Construction Industry, registered on 26 July 1965;

- (xii) To investigate complaints of breaches of codes of practice made under the Industrial Relations Act 1990 provided that the complaint has first been considered by the Labour Relations Commission<sup>66</sup>;
- (xiii) To give its opinion as to the interpretation of codes of practice made under the Industrial Relations Act 1990.<sup>67</sup>

## 2. Employment Equality:

Where a case has been investigated by the Equality Tribunal under the Employment Equality Acts 1998–2008 and the Tribunal has made a decision, either party to the dispute may appeal the decision to the Labour Court.<sup>68</sup> The Court can hear appeals of non-discrimination notices and substantive notices issued by the Equality Authority.<sup>69</sup> The Labour Court may hear appeals of recommendations of equality officers in relation to the equality provisions of the Pensions Act 1990.<sup>70</sup>

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<sup>63</sup> Industrial Relations Act 1946, Part III.

<sup>64</sup> Industrial Relations Act 1946, s 32.

<sup>65</sup> Industrial Relations Act 1946, Part V.

<sup>66</sup> Industrial Relations Act 1990, s 43.

<sup>67</sup> Industrial Relations Act 1990, s 43(1).

<sup>68</sup> Employment Equality Acts 1998–2008, s 83.

<sup>69</sup> Employment Equality Acts 1998–2008, ss 63 and 71.

<sup>70</sup> Pensions Act 1990, s 77.

3. Working Time:

The Labour Court may, on application on behalf of one of the parties, approve a collective agreement relating to working time.<sup>71</sup> The Court may also hear appeals from Rights Commissioner decisions and complaints of non-implementation of Rights Commissioner decisions.<sup>72</sup>

4. Minimum Wage:

The Labour Court may, in certain circumstances, exempt an employer from the obligation to pay the national minimum wage under the National Minimum Wage Act 2000.<sup>73</sup> The Court may hear appeals and investigate complaints of non-implementation of Rights Commissioner decisions under the Act.<sup>74</sup> The Court also has powers, in certain circumstances, in relation to determining the minimum wage with the national partners.<sup>75</sup>

5. Part-Time Work:

The Labour Court may approve collective agreements regarding casual part-time employees under the Protection of Employees (Part-Time Work) Act 2001.<sup>76</sup> It may also hear appeals of Rights Commissioner decisions and complaints of non-implementation of Rights Commissioner decisions under the Act.<sup>77</sup>

6. Fixed-Term Work:

The Court may hear appeals and investigate complaints of non-implementation of Rights Commissioner decisions under the Protection of Employees (Fixed-Term) Work Act 2003.<sup>78</sup>

## The Employment Appeals Tribunal

### *Origin*

[1.16] The Employment Appeals Tribunal (EAT) was established under s 39 of the Redundancy Payments Act 1967 as the Redundancy Appeals Tribunal. The Tribunal's role was initially limited to the adjudication of disputes in relation to redundancy payments. In 1973, the Tribunal's jurisdiction was extended to include claims under the Minimum Notice and Terms of Employment Act 1973. In 1977, s 18 of the Unfair Dismissals Act 1977 changed the name to the Employment Appeals Tribunal. The Act extended the EAT's remit to the hearing of claims of unfair dismissal.

<sup>71</sup> Organisation of Working Time Act 1997, s 24, as amended by EC (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 (SI 494/2004), Reg 12.

<sup>72</sup> Organisation of Working Time Act 1997, s 28, as amended by Protection of Employees (Fixed-Term) Work Act 2003, s 19(2)(a).

<sup>73</sup> National Minimum Wage Act 2000, s 41.

<sup>74</sup> National Minimum Wage Act 2000, ss 27 and 31.

<sup>75</sup> National Minimum Wage Act 2000, s 13.

<sup>76</sup> Protection of Employees (Part-Time) Work Act 2001, s 11 and Sch.

<sup>77</sup> Protection of Employees (Part-Time) Work Act 2001, s 17.

<sup>78</sup> Protection of Employees (Fixed-Term) Work Act 2003, s 15.

**Structure**

[1.17] The EAT presently consists of a chairman, 35 vice chairmen and a panel of 80 other members, forty of whom are nominated by the ICTU, and forty of whom are nominated by bodies representative of employers.<sup>79</sup> The Minister for Enterprise, Trade and Employment may appoint additional vice chairmen and members when he is of the opinion that such appointments are necessary for the speedy dispatch of the business of the EAT.<sup>80</sup>

**Functions**

[1.18] The EAT has jurisdiction to hear claims under the following legislation:<sup>81</sup>

- (i) Redundancy Payments Acts 1967–2007 (appeal of decision of deciding officers);
- (ii) Minimum Notice and Terms of Employment Acts 1973–2001;
- (iii) Unfair Dismissals Acts 1977–2007 (where either party objects to the claim being heard by a Rights Commissioner or on appeal of Rights Commissioner decision);
- (iv) Protection of Employees (Employers' Insolvency) Acts 1984–2001;
- (v) Organisation of Working Time Act 1997 (where the claim is in relation to holidays and made along with other claims that can be made on their own to the Tribunal, such as unfair dismissal);
- (vi) Payment of Wages Act 1991 (appeal of Rights Commissioner decision);
- (vii) Terms of Employment (Information) Acts 1994 and 2001 (appeal of Rights Commissioner decision);
- (viii) Maternity Protection Acts 1994 and 2004 (appeal of Rights Commissioner decision);
- (ix) Adoptive Leave Acts 1995 and 2005 (appeal of Rights Commissioner decision);
- (x) Protection of Young Person (Employment) Act 1996 (appeal of Rights Commissioner decision);
- (xi) Parental Leave Act 1998 (appeal of Rights Commissioner decision);
- (xii) Protection for Persons Reporting Child Abuse Act 1998 (appeal of Rights Commissioner decision);
- (xiii) EC (Protection of Employees on Transfer of Undertakings) Regulations 2003 (appeal of Rights Commissioner decision);
- (xiv) EC (Protection of Employment) Regulations 2000 (appeal of Rights Commissioner decision);

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<sup>79</sup> Employment Appeals Tribunal Annual Report 2007.

<sup>80</sup> Redundancy Payments Act 1979, Sch, amending Redundancy Payments Act 1967, s 39(3).

<sup>81</sup> On the jurisdiction and procedure of the Employment Appeals Tribunal, see further Ch 22, Practice and Procedure in Employment Law.

- (xv) Carer's Leave Act 2001 (appeal of Rights Commissioner decision); and
- (xvi) Competition Acts 2002–2006 (appeal of Rights Commissioner decision).

## The Equality Tribunal

### *Origin*

[1.19] The Equality Tribunal was established under s 75 of the Employment Equality Act 1998. Under the 1998 Act, the title of the Tribunal was the 'Office of the Director of Equality Investigations'. This title was changed by s 30 of the Equality Act 2004 to 'the Equality Tribunal', and the title of the 'Director of Equality Investigations' was changed to the 'Director of the Equality Tribunal'.

The role of the Tribunal under the 1998 was to mediate and/or investigate complaints of unlawful discrimination under the Act. Under the 1998 Act complaints in relation to dismissal contrary to the Act were referred to the Labour Court.<sup>82</sup> The Equality Act 2004 removed this jurisdiction from the Labour Court.<sup>83</sup> As a result of this change, the Equality Tribunal has jurisdiction to hear all claims of discrimination under the Employment Equality Acts 1998–2008. The Equal Status Act 2000 provided that claims under the Act were referable to the Equality Tribunal<sup>84</sup> and the Social Welfare (Miscellaneous) Provisions Act 2004 amended the Pensions Act 1990 to provide that claims of non-equal treatment in relation to pensions were also to be referred to the Equality Tribunal.<sup>85</sup>

### *Structure*

[1.20] The Equality Tribunal is composed of the Director of the Equality Tribunal, appointed by the Minister for Justice, Equality and Law Reform with the consent of the Minister for Finance, and staff appointed by the Minister for Justice, Equality and Law Reform with the consent of the Minister for Finance to assist the Director in carrying out the Director's functions.<sup>86</sup> The Director may appoint staff to be equality officers and equality mediation officers or both.<sup>87</sup> The Director may delegate to an equality officer or an equality mediation officer any function conferred on her.<sup>88</sup> The Director may also, with the approval of the Minister for Justice, Equality and Law Reform and the consent of the Minister for Finance, appoint others to be equality mediation officers.<sup>89</sup> There are currently 16 equality officers, eight of whom are also equality mediation officers.<sup>90</sup>

<sup>82</sup> Employment Equality Act 1998, s 77(2).

<sup>83</sup> Equality Act 2004, s 46.

<sup>84</sup> Equal Status Act 2000, s 21(1).

<sup>85</sup> Social Welfare (Miscellaneous) Provisions Act 2004, Part VII.

<sup>86</sup> Employment Equality Acts 1998–2008, s 75(2).

<sup>87</sup> Employment Equality Acts 1998–2008, s 75(3).

<sup>88</sup> Employment Equality Acts 1998–2008, s 75(4B).

<sup>89</sup> The Tribunal has sought and received approval in principle for a pilot programme of outsourcing part of the mediation programme. The Tribunals 2007 Annual Report notes that this proposal is (at page 19) 'partly to deal with inevitable skills gaps during decentralisation and partly to help smooth out peaks in demand for mediation.' The Report notes that final sanction is still outstanding.

<sup>90</sup> Equality Tribunal Annual Report 2007.

### *Functions*

[1.21] The Equality Tribunal's role is to mediate and/or decide on claims of discrimination made under the Employment Equality Acts 1998–2008, the Equal Status Acts 2000–2008 and the Pensions Acts 1990–2004.<sup>91</sup>

### **The Equality Authority**

#### *Origin*

[1.22] The Equality Authority was established on 18 October 1999 under s 38(1) of the Employment Equality Act 1998. The Authority was established as a continuation of the Employment Equality Agency which had been set up under the Employment Equality Act 1977.<sup>92</sup>

#### *Structure*

[1.23] The Equality Authority consists of 12 members appointed by the Minister for Justice, Equality and Law Reform, one of whom is the chairperson, and of whom, of the number appointed at any one time, the difference between the number of males appointed and the number of females appointed shall be not more than two.<sup>93</sup> The chairperson may hold office for up to four years and can be re-appointed.<sup>94</sup> The Minister must also appoint a vice-chairperson to act as chairperson in the chairperson's absence.<sup>95</sup>

Of the ordinary members of the Authority, two (one male, one female) must be persons appointed on the nomination of organisations representative of employees as the Minister considers appropriate.<sup>96</sup> A further two ordinary members, again, one male, one female, must be appointed on the nomination of organisations representative of employers as the Minister considers appropriate.<sup>97</sup> The remaining ordinary members must be persons as appear to the Minister to have knowledge of, or experience in:

- (i) consumer, social affairs or equality issues, including issues related to the experience and circumstances of groups who are disadvantaged by reference to gender, marital status, family status, sexual orientation, religion, age, disability, race, colour, nationality, ethnic or national origin or membership of the Traveller community;
- (ii) issues related to the provision of goods or service; or

<sup>91</sup> In 2007, of the 852 referrals to the Tribunal, 659 were under the Employment Equality Acts, 7 were under the Pensions Acts and 185 were under the Equal Status Acts (The Equality Tribunal Annual Report, 2007). On the jurisdiction and procedure of the Equality Tribunal, see Ch 22, Practice and Procedure in Employment Law, paras [22.52]–[22.59].

<sup>92</sup> Employment Equality Act 1977, s 37.

<sup>93</sup> Employment Equality Acts 1998–2008, s 41.

<sup>94</sup> Employment Equality Acts 1998–2008, ss 42 and 45.

<sup>95</sup> Employment Equality Acts 1998–2008, s 46(1).

<sup>96</sup> Employment Equality Acts 1998–2008, s 44(1)(a).

<sup>97</sup> Employment Equality Acts 1998–2008, s 44(1)(b).

- (iii) such other subject-matter (including law, finance, management or administration) as appears to the Minister to be relevant to the issues to which the functions of the Authority relate.<sup>98</sup> Ordinary members are part-time and can hold office for up to four years and can be re-appointed.<sup>99</sup>

The Chief Executive Officer of the Equality Authority is appointed by the Authority. The first Chief Executive Officer was appointed by the Minister.<sup>100</sup> The Chief Executive is responsible for managing and controlling the staff, administration and business of the Authority.

The Authority can appoint advisory committees to advise it on matters relation to its functions.<sup>101</sup> The Minister can, after consultation with the Authority, appoint such number of staff to the Authority as is approved by the Minister for Finance.<sup>102</sup> The Authority operates through five sections, administration, communications, development, legal and research, and currently has 57 staff.<sup>103</sup>

### **Functions**

#### **General functions**

[1.24] The Authority has the following general functions:<sup>104</sup>

- (a) to work towards the elimination of discrimination in relation to employment;
- (b) to promote equality of opportunity in relation to the matters to which this Act applies;
- (bb) to provide information to the public on the working of the Parental Leave Act 1998;
- (c) to provide information to the public on and to keep under review the working of this Act, the Maternity Protection Act 1994 and the Adoptive Leave Act 1995 and, whenever it thinks necessary, to make proposals to the Minister [for Justice, Equality and Law Reform] for amending any of those Acts; and
- (d) to keep under review the working of the Pensions Act 1990, as regards the principle of equal treatment and, whenever it thinks necessary, to make proposals to the Minister for Social and Family Affairs for amending that Act.

Section 39 of the Equal Status Act 2000 conferred further functions on the Authority: to work towards the elimination of prohibited conduct; to promote equality of opportunity

<sup>98</sup> Employment Equality Acts 1998–2008, s 44(1)(c).

<sup>99</sup> Employment Equality Acts 1998–2008, ss 44(2) and 45.

<sup>100</sup> Employment Equality Acts 1998–2008, s 49(7).

<sup>101</sup> Employment Equality Acts 1998–2008, s 48(1).

<sup>102</sup> Employment Equality Acts 1998–2008, s 51(1).

<sup>103</sup> Equality Authority Annual Report 2007. Under measures to be introduced following Budget 2009, the Equality Authority and Human Rights Commission are to fully integrate their facilities, back office and administrative services and access for citizens. It is not clear what effect this will have on the functioning of the Authority though the proposal has been strongly opposed by the Authority. (*Equality Authority Response to Proposed Amalgamation of State Agencies* Equality Authority Press Release – 14 September 2008).

<sup>104</sup> Employment Equality Acts 1998–2008, s 39.

in relation to the matters to which the Equal Status Act applies; and to provide information to the public on and to keep under review the workings of the Act and, whenever the Authority thinks it necessary, to make proposals to the Minister for Justice, Equality and Law Reform for its amendment.

### **Codes of practice**

The Authority may, and, if requested to do so by the Minister for Justice, Equality and Law Reform, must, prepare draft codes of practice in furtherance of the aims of the elimination of discrimination in employment and the promotion of equality of opportunity in employment and in relation to the matters to which the Equal Status Acts apply.<sup>105</sup> In 2002, the Authority published the Code of Practice on Sexual Harassment and Harassment at Work.<sup>106</sup>

### **Research and information**

The Authority may undertake or sponsor research or the dissemination of information as it considers necessary and expedient for the purpose of performing any of its functions.<sup>107</sup> The Authority has published a number of information publications on equality legislation, such as the Maternity Protection Acts 1994 and 2004, the Parental Leave Act 1998, the Adoptive Leave Act 1995 and the Equal Status Acts 2000–2004. It has also published policy positions on various aspects of equality, including a report on traveller ethnicity<sup>108</sup> and on building an intercultural society.<sup>109</sup> The Authority has also published a number of good practice guidelines in relation to equality.<sup>110</sup>

### **Inquiries**

The Authority may, and if requested by the Minister, must, for any purpose connected with the performance of its functions, conduct an inquiry<sup>111</sup> for which it may summon witnesses and require the provision of information.<sup>112</sup> Arising from the inquiry the Authority may make recommendations and serve non-discrimination notices.<sup>113</sup>

### **Assistance in proceedings**

The Authority may provide assistance to a person taking proceedings under the Employment Equality Acts and the Equal Status Acts.<sup>114</sup>

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<sup>105</sup> Employment Equality Acts 1998–2008, s 56.

<sup>106</sup> Employment Equality Act 1998 (Code of Practice) (Harassment) (Order) 2002 (SI 78/2002).

<sup>107</sup> Employment Equality Act 1998, s 57.

<sup>108</sup> Traveller Ethnicity: An Equality Authority Report (2006, The Equality Authority).

<sup>109</sup> Building an Intercultural Society (2003, The Equality Authority).

<sup>110</sup> Guidelines include ‘Guidelines for Equal Status Policies in Enterprises’ (2005, The Equality Authority) and ‘Delivering Equality of Opportunity in Small and Medium Sized Enterprises’ (2002, The Equality Authority).

<sup>111</sup> Employment Equality Act 1998, s 58.

<sup>112</sup> Employment Equality Act 1998, s 59.

<sup>113</sup> Employment Equality Act 1998, ss 60 and 61.

<sup>114</sup> Employment Equality Acts 1998–2008, s 67.

**Equality reviews**

The Authority may carry out, or arrange the carrying out of equality reviews in relation to particular businesses or industries and, on foot of the review prepare or arrange the preparation of equality action plans.<sup>115</sup>

**Legislation review**

The Authority may review any legislation that is likely to affect or impede the elimination of discrimination in relation to employment or the promotion of equality of opportunity in relation to employment and report to the Minister on the review.<sup>116</sup>

**Intoxicating Liquor Act 2003**

Under s 19 of the Intoxicating Liquor Act 2003, a person who claims that ‘prohibited conduct’ is being directed against them, which is discrimination contrary to the Equal Status Act 2000 at or on point of entry to a licensed premises, may apply to the District Court for redress. Where it appears to the Authority that prohibited conduct is being directed against persons generally or against a person who has not applied to the District Court for redress and who could not reasonably be expected to do so, the Authority can apply to the Court for redress in respect of that conduct.<sup>117</sup>

**Strategic plans**

Every three years, the Authority must prepare and submit to the Minister for Justice, Equality and Law Reform a strategic plan containing the key objectives, outputs and related strategies, including the use of resources, by the Authority.<sup>118</sup>

**The National Employment Rights Authority*****Origin***

[1.25] ‘Towards 2016’, the Ten Year Framework Social Partnership Agreement 2006–2015 contained a strong emphasis on employment law compliance. The Agreement provided:<sup>119</sup>

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<sup>115</sup> Employment Equality Acts 1998–2008, s 69.

<sup>116</sup> Employment Equality Acts 1998–2008, s 73.

<sup>117</sup> Intoxicating Liquor Act 2003, s 19(6)(a).

<sup>118</sup> Employment Equality Acts 1998–2008, s 40. The current Equality Authority Strategic plan provides for six ‘strategic goals’: (i) the majority of people in Ireland are aware that they have rights and responsibilities under equality legislation and that they have statutory leave entitlements; (ii) enhanced access to redress under Irish equality legislation and EU Equal Treatment Directives for people experiencing discrimination; (iii) a proactive approach by employers and service providers in key sectors to promote equality and achieve compliance with equality legislation; (iv) continuous enhancement of evidence for and understanding of equality issues; (v) practical responses made to critical priority issues for groups experiencing inequality; and (vi) an effective and efficient Equality Authority. (Equality Authority, Strategic Plan 2009–2011, March 2009).

<sup>119</sup> Section 12.1–12.3, Towards 2016 Ten Year Framework Social Partnership Agreement 2006–2015.

12.1 While recognising the broad level of compliance with employment rights across the economy generally, there is, nevertheless, a significant shared commitment between the parties to securing better compliance with legal requirements, underpinned by adequate enforcement. It is also agreed that an effective employment rights compliance system must cover:

- The active and responsible contribution of employers, employees and trade unions;
- The education of vulnerable workers;
- The promotion of entitlements with a special emphasis on workers from overseas;
- Information provision to all employees and employers;
- Substantially strengthened arrangements for inspection;
- Adjudication by the Rights Commissioners, Employment Appeals Tribunal and Labour Court; and
- Enforcement of adjudication outcomes.

12.2 The overall objective is to secure greatly increased public confidence in the system of compliance on the basis of an informed and empowered working population, who will have simple, independent and workable means of redress, underpinned by the need for fairness and impartiality, with adjudication and if needs be, enforcement available to them, in a reasonable length of time.

12.3 A major package of measures has been agreed by the parties with these aims in mind, including the establishment of a new statutory Office dedicated to employment rights compliance; a trebling in the number of Labour Inspectors; greater coordination among organisations concerned with compliance; new requirements in respect of record keeping; enhanced employment rights awareness activity; the introduction of a new and more user friendly system of employment rights compliance; increased resourcing of the system; and higher penalties for non-compliance with employment law.

Section 13 provided for a new statutory Office of the Director for Employment Rights Compliance, under the aegis of the Department of Enterprise, Trade and Employment. This office was established on an interim basis in February 2007 with the title, ‘The National Employment Rights Authority’ (NERA). The Employment Law Compliance Bill provides for the establishment of NERA on a statutory basis. The Bill was published by the Department of Enterprise, Trade and Employment on 18 March 2008. The Bill contains detailed provisions on the functions of NERA. It provides that the objective of NERA ‘shall be to promote, encourage and secure compliance with employment legislation’.<sup>120</sup>

### ***Structure***

[1.26] The interim Director of NERA was appointed by the Minister for Enterprise, Trade and Employment on 12 February 2007. The Employment Rights Compliance Bill provides that the interim Director shall be appointed the Director on commencement of the Act.<sup>121</sup> NERA’s interim Advisory Board consists of an independent chairperson, two members appointed by the Minister, three members nominated by organisations

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<sup>120</sup> Employment Rights Compliance Bill 2008, s 6(2).

<sup>121</sup> Employment Rights Compliance Bill 2008, s 8(2).

representative of employees and three members nominated by organisations representative of employers. The Minister shall make one further appointment also. The Director is supported in carrying out his functions by a management team and staff.

### ***Functions***

[1.27] The Employment Law Compliance Bill provides that the Director of NERA shall have functions including: the enforcement of employment legislation; the investigation of instances of suspected offences under employment legislation; and referral of the cases to the Director of Public Prosecutions where the Director has reasonable grounds to believe that an offence under employment legislation has been committed.<sup>122</sup>

### **The Health and Safety Authority**

#### ***Origin***

[1.28] The National Authority for Occupational Safety and Health was established under the Safety, Health and Welfare at Work Act 1989.<sup>123</sup> The 1989 Act was repealed by the Safety, Health and Welfare at Work Act 2005.<sup>124</sup> The 2005 Act provided for the continuation of that body and for it to be known as the Health and Safety Authority.<sup>125</sup> The Health and Safety Authority operates under the aegis of the Department of Enterprise, Trade and Employment.

#### ***Structure***

[1.29] The Board of the Authority is composed of a chairperson and eleven ordinary members appointed by the Minister for Enterprise, Trade and Employment.<sup>126</sup> The ordinary members consist of three members nominated by organisations representative of employees, three members nominated by organisations representative of employers and five members that the Minister considers appropriate including one person from the Department of Enterprise, Trade and Employment.<sup>127</sup> The Board may appoint advisory committees from time to time to advise it in relation to its functions.<sup>128</sup> The Chief Executive of the Authority is responsible for the administration and business of the Authority and reports to the Board.<sup>129</sup> The Board can appoint Assistant Chief Executives as assistants to the Chief Executive.<sup>130</sup>

<sup>122</sup> Employment Rights Compliance Bill 2008, s 14.

<sup>123</sup> Safety, Health and Welfare at Work Act 1989, s 15(1).

<sup>124</sup> Safety, Health and Welfare at Work Act 2005, s 4.

<sup>125</sup> Safety, Health and Welfare at Work Act 2005, s 32(1)(a).

<sup>126</sup> Safety, Health and Welfare at Work Act 2005, s 37(1).

<sup>127</sup> Safety, Health and Welfare at Work Act 2005, s 37(2).

<sup>128</sup> Safety, Health and Welfare at Work Act 2005, s 38(1).

<sup>129</sup> Safety, Health and Welfare at Work Act 2005, s 39.

<sup>130</sup> Safety, Health and Welfare at Work Act 2005, s 39(3).

**Functions**

[1.30] The general functions of the Authority are:<sup>131</sup>

- (i) to promote, encourage and foster the prevention of accidents, dangerous occurrences and personal injury at work in accordance with the relevant statutory provisions;
- (ii) to promote, encourage, foster and provide education and training in the safety, health and welfare of persons at work;
- (iii) to encourage and foster measures promoting the safety, health and welfare of persons at work;
- (iv) to make adequate arrangements for the enforcement of the relevant statutory provisions;
- (v) to monitor, evaluate and make recommendations to the Minister regarding implementation and compliance with –
  - (a) the relevant statutory provisions, and
  - (b) best practice relating to safety, health and welfare at work, and the review and maintenance of relevant records by employers;
- (vi) to promote, encourage and foster cooperation with and between persons or bodies of persons that represent employees and employers and any other persons or bodies of persons, as appropriate, as regards the prevention of risks to safety, health and welfare at work in accordance with the relevant statutory provisions;
- (vii) to make any arrangements that it considers appropriate for providing information and advice on matters relating to safety, health and welfare at work;
- (viii) to make any arrangements that it considers appropriate to conduct, commission, promote, support and evaluate research, surveys and studies on matters relating to the functions of the Authority and for this purpose –
  - (a) to foster and promote contacts and the exchange of information with other persons or bodies of persons involved in safety, health and welfare at work in and outside the State, and
  - (b) as it considers appropriate, to publish in the form and manner that the Authority thinks fit, results arising out of such research, studies and surveys;
- (ix) to prepare and adopt a strategy statement and to monitor its implementation;
- (x) to prepare and adopt a work programme;
- (xi) to comply with any directions in writing, whether general or particular, relating to its functions, that the Minister may from time to time give the Authority;
- (xii) to give to the Minister any information relating to the performance of the functions that the Minister may from time to time require; and
- (xiii) to perform any additional functions conferred on the Authority by order.

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<sup>131</sup> Safety, Health and Welfare at Work Act 2005, s 34(1) details the functions of the Authority.

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**The Department of Enterprise, Trade and Employment**

**[1.31]** The Department of Enterprise, Trade and Employment operates in seven divisions:

- (i) The Labour Force Development Division;
- (ii) Competitiveness and International Affairs Division;
- (iii) Employment Rights and Industrial Relations Division;
- (iv) Science, Technology and Intellectual Property Division;
- (v) Corporate Services and Economic Policy Division;
- (vi) Consumers, Competition and Commerce Division; and
- (vii) Enterprise and Agencies Division.

The Employment Rights and Industrial Relations Division is of particular relevance to employment law. Its role is to establish and protect employment rights and to provide the policy, legislative and institutional framework within which good industrial relations prosper. Its areas of responsibility include licensing of employment agencies, the Employment Appeals Tribunal, employment rights, through the National Employment Rights Authority, liaison between the Health and Safety Authority and the Department, industrial relations, including liaising with the Labour Relations Commission and the Labour Court, administration of the insolvency payments scheme, policy and reporting for the purposes of the International Labour Organisation and the Council of Europe, redundancy payments and preparation of legislation.

